



S.A.No.941 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 18.08.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.941 of 2000

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1. Kanjadiar Konar (died)
2. Pandi
3. Pappa
4. Valli (died)
5. Sathaiya
6. Gandhimathi
7. Krishnaveni
8. Maheswari

(Appellants 2 to 8 are brought on record as legal representatives of the deceased first appellant, vide Court Order dated 25.02.2022 made in C.M.P.(MD).Nos.1545, 1547, 1549 and 1552 of 2022 in S.A.No.941 of 2000)

9. Gopal
10. Valarmathi
11. Rajalakshmi
12. Jayanthi
13. Vanitha

(Appellants 9 to 13 are brought on record as legal representatives of the deceased 4th appellant, vide Court Order dated 26.04.2023 made in C.M.P.(MD).No.5461 to 5463 of 2023 in S.A.No.941 of 2000)

.. Appellants

Vs.

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1. Karupiah Konar (died)
2. K.Chellammal (died)
3. K.Ganeshan
K.Govindan (died)
4. Pushpam
5. Nesa Vadivel
6. Saravanan
7. Thirugnanasambantham
8. Priya
9. K.Subramaniyan
10. K.Arumugam
11. K.Alamelu
12. K.Yasodhai

(Respondents 2 to 12 are brought on record as Legal representatives of the deceased first respondent, vide Court Order dated 03.02.2023 made in M.P.(MD).Nos.1 to 3 of 2013 in S.A.No.941 of 2000)

(R-2 died - vide Memo dated 05.06.2023 filed on 06.06.2023 in USR.No.16378, is recorded as second respondent (died) and the respondents 3 to 12, who are already on record and are recorded as Legal representatives of the deceased 2nd respondent - vide Court Order dated 12.06.2023 made in S.A.No.941 of 2000)

.. Respondents

Second Appeal filed under Section 100 of the CPC against the judgment and decree dated 28.01.1999 made in A.S.No.138 of 1996 on the file of the Principal District Court, Ramanathapuram, partly allowing the appeal and decreeing the suit in part O.S.No.61 of 1985 on the file of the District Munsif Court, Ramanathapuram, by reversing the judgment and



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decree dated 12.09.1994 made in O.S.No.61 of 1985 on the file of the District Munsif Court, Ramanathapuram.

For Appellants : Mr.J.Madhu

For Respondents : Mr.S.Venkatesh
R3 to R12

J U D G M E N T

This Second Appeal is filed by the defendant (since deceased) against the judgment and decree dated 28.01.1999 made in A.S.No.138 of 1996 on the file of the Principal District Court, Ramanathapuram, partly allowing the appeal and decreeing the suit in part in O.S.No.61 of 1985 on the file of the District Munsif Court, Ramanathapuram, by reversing the judgment and decree dated 12.09.1994 made in O.S.No.61 of 1985 on the file of the District Munsif Court, Ramanathapuram. The first appellate Court also declared that the plaintiff is entitled for title of property having an extent of 0.2-1/4 cents in the suit property, which is just adjacent to the portion shown as ECHKE in Ex.C-4. It was also directed by the first appellate Court that the plaintiff is entitled for recovery of possession of the extent of land as well and Exs.C-1 to C-4, which will be appended to the decree. It was

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further observed by the lower appellate Court that a perusal of the plaint would reveal that in paragraph 11 of the suit property is wrongly described as S.No.385/5 and the decree would be drafted only after the plaintiff taking steps to amend the 11th paragraph of the plaint.

2. For the purpose of easy reference, the parties are hereby mentioned as plaintiff and defendant, as they are ranked in the original suit.

3. The case of the plaintiff is as follows:

The suit property and the property situate on the West of the same, originally comprised in one extent, which belonged to one Lakshmana Kudumban and another Thothan Kudumban, jointly under a sale deed dated 16.10.1936. Both the brothers had got the property partitioned equally among themselves. The heirs of Thothan Kudumban sold their share in the property to one Karuppiyah on 23.05.1951, who in turn, sold the same to the plaintiff on 06.09.1959. Ever-since the purchase, the plaintiff is in title, possession and enjoyment of the suit property. The same is comprised in S.No.385/9, having an extent of 33 cents in Patta No.564. The plaintiff had also prescribed title by adverse possession to the suit property. The property

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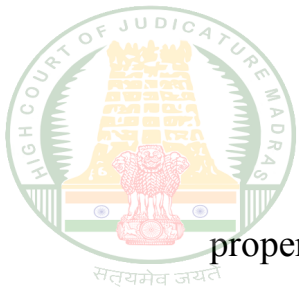
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that fell to the share of Lakshmana Kudumban, which is lying on the West of the suit property, is in S.No.385/8 and two survey numbers are divided by a ridge in between. The defendant trespassed into a portion of the property belonging to the plaintiff to an extent of 12 feet East-West and the entire Southern extent on the Western portion of the property purchased by the plaintiff. Hence, the suit is filed for declaration that the suit property belonged to the plaintiff and also prayed for recovery of possession.

4. The case of the defendant is as follows:

The suit property absolutely belongs to the defendant. It is true that the suit property and the properties lying on the East and West of the suit property, comprised in S.Nos.385/9 and 385/8, are equal portions of a single property which were divided between the brothers, namely Lakshmanan and Thothan equally. The plaintiff and his predecessors-in-title and defendant and his predecessors-in-title were enjoying the properties as divided between the brothers, namely Lakshmana and Thothan. The defendant is in enjoyment and possession of his property, which includes the suit property as well. The defendant never trespassed into the suit property. The plaintiff has no title, possession or enjoyment over the suit property. The suit

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property and the property lying on the Western side of the suit property, are being enjoyed as one property for more than the statutory period. The defendant was not a party to the survey proceedings and during the enquiry, the plaintiff obtained Patta. The plaintiff never obtained prescribed title by adverse possession over the suit property, whereas the defendant had prescribed such a title. The plaintiff is not entitled for declaration or possession and hence, the suit may be dismissed.

5. During the course of trial, on the side of the plaintiff, P.W.1 was examined and Exs.A-1 to A-6 were marked and on the side of the defendant, D.W.1 was examined and no document was marked. Exs.C-1 to C-4 were marked as Court documents.

6. Considering the oral and documentary evidence, the trial Court dismissed the suit, against which, the plaintiff preferred First Appeal in A.S.No.138 of 1996, which was partly allowed by observing as follows :

(i) The judgment and decree in O.S.No.61 of 1985, dated 12.09.1994, was set aside;

(ii) It was declared that the plaintiff is entitled for title of property



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having an extent of 0.2-1/4 cents in the suit property, which is just adjacent

to the portion shown as ECHKE in Ex.C-4.

(iii) The plaintiff is entitled for recovery of possession of the extent of land as well and Exs.C-1 to C-4 which will be appended to the decree.

(iv) A perusal of the plaint would reveal that in Paragraph 11 of the plaint, the suit property is wrongly described as S.No.385/5 and the decree will be drafted after the plaintiff taking steps to amend the 11th paragraph of the plaint.

As against the above judgment and decree of the first appellate Court, the defendant has filed the present Second Appeal.

7. The Second Appeal was admitted on 30.06.2000 on the following substantial questions of law:

(i) Is the first appellate Court right in relying only on the Commissioner's report for partly decreeing the suit, in the absence of any documentary or oral evidence with regard to the extent purchased by the parties ?

(ii) Is the lower appellate Court right in giving the relief which was not prayed for ?

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(iii) Is the lower appellate Court right in directing the plaintiff/respondent to file a petition for amendment, knowing fully well that the description of the property is entirely different and proceeding to pass a decree in respect of the property, the description of which is subsequently amended ?

8. Learned counsel for the appellants/defendant submitted that the first respondent/plaintiff is not entitled to the relief claimed in O.S.No.61 of 1985. The trial Court has rightly appreciated the entire oral and documentary evidence and dismissed the suit. Admittedly, the plaintiff has not produced any documentary evidence to prove that he is in possession and enjoyment of the suit property ever-since the date of purchase, but the first appellate Court erred in not considering the specific findings of the trial Court regarding the enjoyment of the suit property by the defendant and thereby, committed mis-carriage of justice, by partly allowing the appeal and decreeing the suit insofar as 0.2-1/4 cents in the disputed property. Learned counsel further submitted that there are two contradictory views in the Commissioners' reports regarding the extent of the suit property, but the first appellate Court erroneously took into consideration the view of the

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second Advocate Commissioner's report and relied on Ex.C.3 and Ex.C.4

and partly allowed the first appeal, which warrants interference.

9. Learned counsel for the appellants/defendant further submitted that the suit property and the properties lying on the East - West of the suit property, are being enjoyed as one property for more than the statutory period. The defendant was not a party to the survey proceedings and during the enquiry, the plaintiff got Patta. The plaintiff miserably failed to establish his right, title and possession over the suit property and also continuing the possession without any disturbance or hindrance of the defendant, but he claimed the adverse possession over the suit property. It is further submitted that the plaintiff has wrongly described the suit property as S.No.385/5, instead S.No.385/9 and therefore, it is for the plaintiff to prove his case and he cannot take advantage of the loop-holes left by the defendant. Though the trial Court had dismissed the suit, the first appellate Court had partly allowed the appeal and granted liberty to amend the survey number as S.No.385/9. Therefore, the judgment and decree of the first appellate Court are liable to be set aside and the judgment and decree passed by the trial Court are liable to be restored.

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10. Learned counsel for the first respondent/plaintiff submitted that one Lakshmana Kudumban and Thothan Kudumban have jointly purchased the property in question under a registered sale deed, dated 16.10.1936 and both brothers have partitioned equally among themselves. The legal heirs of the said Thothan Kudumban sold their share to one Karuppiah on 23.05.1951, who in turn, sold the same to the plaintiff on 06.09.1959. Ever since the date of purchase, the plaintiff has title and is in possession and enjoyment of the suit property, comprised in S.No.385/9 of an extent of 33 cents in Patta number 564. The share of the said Lakshmana Kudumban is lying on the Western side of the suit property, which is comprised in S.No. 385/8. While that being so, the defendant trespassed into the portion of the suit property belonging to the plaintiff of an extent of 12 feet East-West and the entire Southern extent on the Western portion of the property purchased by the plaintiff. Hence, the suit in O.S.No.61 of 1985 has been filed for declaration and recovery of possession. Pending suit, two Advocate Commissioners were appointed, who submitted their reports as Exs.C-1 to C-4 and Exs.C-3 and C-4, which clearly show the extent of the physical features of the suit property. Though the trial Court failed to appreciate the

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material facts and admissions made by both the parties while examining the witnesses as P.W.1 and D.W.2, dismissed the suit, whereas, the first appellate Court, after appreciating the entire oral and documentary evidence, particularly, the Advocate Commissioner's reports Exs.C-3 and C-4 and physical features of the suit property, rightly allowed the appeal in part of an extent of 0.2-1/4 cents and dismissed the suit regarding the remaining extent. Therefore, there is no merit in the second appeal and the same is liable to be dismissed. Since the case was decided by the first appellate Court only based on the factual aspects and also Revenue records and Commissioners' reports, the present second appeal is not maintainable for want of substantial question of law.

11. Heard both sides and perused the materials available on record.

12. Admittedly, the plaintiff's predecessor-in-title and defendant's predecessor-in-title are brothers, who had purchased the suit property jointly and the properties are lying on the East and West of the suit property comprised in S.Nos.385/9 and 385/8 as a single property under a registered sale deed, dated 16.10.1936. Thereafter, both brothers partitioned the



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aforesaid properties equally among themselves. The legal heirs of Thothan

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Kudumban sold their share i.e., Eastern side of the property to one Karuppiyah, under a registered sale deed dated 23.05.1951, and subsequently, he sold the property to the plaintiff by virtue of a registered sale deed, dated 06.09.1959. The said portion is comprised in S.No.385/9 of an extent of 33 cents in Patta No.564. While so, the said Lakshmana Kudumban sold the property which is lying on the Western side of the suit property to the defendant's predecessors-in-title and subsequently the defendant purchased the said portion i.e., S.No.385/8 measuring an extent of 29 cents. Therefore, there is no dispute that both the properties are adjacent properties.

13. Since the undisputed facts are that two brothers viz., Lakshmana Kudumban and Thothan Kudumban jointly purchased the suit property and the property situated on the West of the same as a single property under a registered sale deed, dated 16.10.1936, in which, the total extent of land was given as 40 Carpenters cubits East-West and 50 Carpenters cubits South-North and no survey number or extent in cents, etc., are mentioned. At the time of partition between both brothers, Eastern portion having an extent of

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20 carpenters cubits East-West and 50 carpenters cubits South-North, was allotted to the plaintiff's predecessor-in-title viz., Thothan Kudumban and Western portion having an extent of 20 carpenters cubits East-West and 50 carpenters cubits South-North was allotted to the defendant's predecessor-in-title viz., Lakshmana Kudumban. The description of title and possession of predecessors-in-title both would contain only the approximate extent in Carpenters cubits and not in cents. Subsequently, under Ex.A.4 and Ex.A.5, the survey number was given to the entire property as S.No.385/9, measuring an extent of 33 cents and patta was given as No.564 in the name of Thothan Kudumban and S.No.385/8 measuring an extent of 29 cents is shown as belonging to Lakshmana Kudumban. Though there are variations in the extent and discrepancy in the property description, the trial Court appointed two Advocate Commissioners, who in turn, have measured the suit property and the properties of the plaintiff and defendant and submitted their reports, *vide* Exs.C-1 to C-4. The first appellate Court, after taking into consideration the report submitted by the learned Advocate Commissioner in Exs.C-3 and C-4, came to the conclusion that the defendant had encroached 0.2-1/4 cents in the suit property and partly allowed the first appeal.

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WEB COPY 14. It is the contention of the defendant that there is a discrepancy in the description of the property and survey number was also wrongly mentioned as S.No.385/5, instead of S.No.385/9 in the plaint. However, the defendant himself admitted that his portion is covered under S.No.385/8 and naturally, the plaintiff's property being adjacent property would be only S.No.385/9 and not S.No.385/5. Due to the typographical mistake committed in the plaint regarding the survey numbers, the plaintiff is not dis-entitled to the relief sought for. Therefore, the first appellant Court granted liberty to the plaintiff to take steps to amend the survey number as S.No.385/9, instead S.No.385/5 and also directed the Court below to draft the decree after carrying out the amendment by the plaintiff. It is the further contention of the defendant that though there are variations in the extent, the Patta has also been issued for the said properties. Patta is not a document of title or evidence of title. However, the admitted facts and also physical features mentioned in the Commissioners' reports, clearly show that, in the instant case, both properties are adjacent properties and there is no dispute between the parties regarding the boundaries. If the extents given are of doubtful or varying extents in the documents of title relating to the property,

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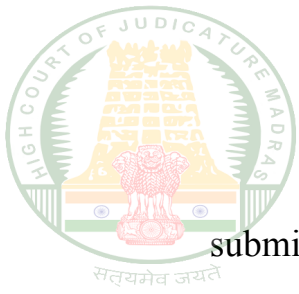
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boundaries will be preferred to be extent. It is settled proposition of law that the boundaries generally prevail over either extent (area or measurement) or survey number, when there is a conflict or discrepancy in the description of the property. Though the trial Court has miserably failed to appreciate both oral and documentary evidence and dismissed the suit, the first appellant Court, which is a final Court of fact finding, while deciding the appeal, re-appreciated the entire evidence, and relied on the Commissioner's report and also based on the admitted facts, it was found that the defendant has encroached 0.2-1/4 cents adjacent to the plaintiff's property and partly allowed the appeal to that extent. Since the first appellate Court is the last fact finding Court and further the first appeal suit is continuation of the original suit, the first appellate Court has got power of re-appreciating the evidence independently and give findings independently and also the Court can mould the relief to meet out substantial justice and therefore, there is nothing wrong to rely on the Advocate Commissioner's report. The substantial question of laws formulated by this Court are answered against the defendant and answered in favour of the plaintiff.

15. Considering the facts and circumstances and also considering the

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submissions of both sides, this Court does not find any perversity in the findings of the first appellate Court and hence, there is no merit in the second appeal and the same is liable to be dismissed.

16. In the result, the judgment and decree dated 28.01.1999 made in A.S.No.138 of 1996 on the file of the Principal District Court, Ramanathapuram, by reversing the judgment and decree dated 12.09.1994 made in O.S.No.61 of 1985 on the file of the District Munsif Court, Ramanathapuram, are hereby confirmed. Accordingly, the Second Appeal is dismissed. However, there shall be no order as to costs.

18.08.2025

Index : Yes/No
Neutral Citation Case : Yes/No
Speaking Order : Yes/No
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To

1. The Principal District Judge,
Ramanathapuram.
2. The District Munsif,
Ramanathapuram.

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3. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court at Madurai.



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P.VELMURUGAN, J

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